

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Volha Shauchenka	Team: Squad #8	CCRB Case #: 201804459	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 01/01/2017 , Friday, 08/04/2017 6:00 AM, Saturday, 08/05/2017	Location of Incident: [REDACTED]	Precinct: 113	18 Mo. SOL 2/4/2019	EO SOL 2/4/2019	
Date/Time CV Reported Tue, 05/29/2018 7:40 PM	CV Reported At: IAB	How CV Reported: E-mail	Date/Time Received at CCRB Tue, 06/05/2018 11:03 AM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM Mark Kistoo	10224	[REDACTED]	113 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Sergio Gonzalez	03832	[REDACTED]	113 PCT
2. LT David Goldstein	00000	[REDACTED]	113 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Mark Kistoo	Abuse: On August 4, 2017, Police Officer Mark Kistoo took a photograph of § 87(2)(b) [REDACTED]	[REDACTED]
B.POM Mark Kistoo	Discourtesy: On an unknown date in 2017, Police Officer Mark Kistoo spoke discourteously to § 87(2)(b) [REDACTED]	[REDACTED]
C.POM Mark Kistoo	Abuse: On unknown dates in 2017, Police Officer Mark Kistoo made sexually suggestive remarks to § 87(2)(b) [REDACTED]	[REDACTED]
D.POM Mark Kistoo	Abuse: On August 5, 2017, Police Officer Mark Kistoo made a sexually suggestive remark to § 87(2)(b) [REDACTED]	[REDACTED]
E.POM Mark Kistoo	Abuse: On August 5, 2017, Police Officer Mark Kistoo propositioned § 87(2)(b) [REDACTED]	[REDACTED]

Case Summary

On May 29, 2018, § 87(2)(b) filed this complaint on behalf of himself and his wife § 87(2)(b) with IAB via email generating log #18-20898. It was received by the CCRB on June 5, 2017.

On August 4, 2017, at the 113th Precinct stationhouse, PO Mark Kistoo took a photograph of § 87(2)(b) on his personal cell phone (**Allegation A: Abuse of Authority**, § 87(2)(g)). On an unknown date in 2017, PO Kistoo used profanity towards § 87(2)(b) (**Allegation B: Discourtesy**, § 87(2)(g)). On unknown dates in 2017, PO Kistoo made sexually suggestive remarks to § 87(2)(b) (**Allegation C: Abuse of Authority**, § 87(2)(g)). On August 5, 2017, PO Kistoo made a sexually suggestive remark to § 87(2)(b) and propositioned her (**Allegations D and E: Abuse of Authority**, § 87(2)(b), § 87(2)(g)).

There is no video recording of the incident.

Findings and Recommendations

Allegation (A) Abuse of Authority: On August 4, 2017, Police Officer Mark Kistoo took a photograph of § 87(2)(b)

In his verified statement to the CCRB, § 87(2)(b) stated that on August 4, 2017, at approximately 6:00 am, he came to the 113th Precinct stationhouse to turn himself in, as arranged by his criminal attorney [BR 08]. On an unknown date after that, § 87(2)(b)'s friend § 87(2)(b) forwarded § 87(2)(b) a picture of him sitting at the stationhouse in handcuffs, which was posted on an unspecified social media website [See photo BR 04]. § 87(2)(b) did not ask him whose account it was posted from but § 87(2)(b) believed that it was posted by his wife following a domestic incident they had on July 29, 2017, to which PO Kistoo and other officers from his command responded. § 87(2)(b) was consistent in his preceding statements to IAB and the CCRB in regards to this allegation [NYPD 01, BR 01, 02, 03, 05].

§ 87(2)(b) was uncooperative with the investigation and § 87(2)(b) confirmed § 87(2)(b)'s account regarding this part of the incident in his unverified phone statement [BR 18, 14].

When interviewed at the CCRB, PO Kistoo confirmed that he along with other officers of his command responded to § 87(2)(b) and § 87(2)(b)'s residence at § 87(2)(b) § 87(2)(b) in Queens in regards to a domestic incident that occurred between § 87(2)(b) and § 87(2)(b)'s sister, who is § 87(2)(b) [BR 16]. During their interaction, PO Kistoo provided § 87(2)(b) with his contact card with his personal and work cell phones written on it because the incident occurred in his sector and he wanted to build rapport with § 87(2)(b) and answer any questions she may have regarding subsequent steps she may have to take. In addition, they found common ground because § 87(2)(b) is a § 87(2)(b) and PO Kistoo is currently a § 87(2)(b). On an unknown date after this, when PO Kistoo was on military leave, § 87(2)(b) informed PO Kistoo via text message and calls to his personal cell phone that § 87(2)(b) was abusing her and had a gun in his house. On an unknown date following that, while PO Kistoo was still on military leave, his Sergeant and Lt. David

Goldstein of the same command confiscated § 87(2)(b)'s gun from their residence and issued a warrant for his arrest. Either on August 3 or 4, 2017, § 87(2)(b) texted PO Kistoo on his personal cell phone that she was worried because § 87(2)(b) had not returned home and was afraid he or his sister might hurt her. On August 4, 2017, when PO Kistoo was leaving the stationhouse, he observed § 87(2)(b) being placed in handcuffs at the front desk. He took a picture of § 87(2)(b) on his personal cell phone from behind the desk and sent it to § 87(2)(b) in order to calm her down. PO Kistoo left his department issued cell phone in his locker on that day. PO Kistoo was unaware if his actions followed any particular NYPD procedures. Upon being shown a photo of § 87(2)(b) from the stationhouse, PO Kistoo acknowledged that was the one he took.

Based on § 87(2)(b)'s arrest report § 87(2)(b) from August 4, 2017, he was charged with assault with intent to cause physical injury and harassment in the second degree [NYPD 11].

According to NYPD Patrol Guide Procedure 203-06, using a personal cellular phone to record video or audio during any police encounter is prohibited conduct [BR 20]. In addition, according to NYPD Operations Order 20 as of May 5, 2015, officers are not allowed to photograph performance of non-enforcement functions or administrative duties within a Department facility on their NYPD issued cell phones/tablets [BR 22].

§ 87(2)(g)
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Allegation (B) Discourtesy: On an unknown date in 2017, Police Officer Mark Kistoo spoke discourteously to § 87(2)(b)

§ 87(2)(b) provided several screen shots of text messages exchanged between § 87(2)(b) and PO Kistoo, which he stated were provided to him by his criminal attorney § 87(2)(b). According to one of the threads, on an unknown date in 2017, PO Kistoo and § 87(2)(b) were discussing § 87(2)(b)'s potential reaction to turning himself in [See photo BR 12]. § 87(2)(b) wrote that § 87(2)(b) is calm around officers and PO Kistoo replied, "No fuck that. Don't lie."

In his testimony to the CCRB, PO Kistoo initially stated that he might have called § 87(2)(b) an "a-hole" or a "piece of shit" in his communications with § 87(2)(b) because he physically abused her [BR 16]. Upon reviewing the screenshot of the abovementioned text messages thread, PO Kistoo admitted he made that statement and explained he meant that § 87(2)(b) should not lie and perjure herself because he knew that § 87(2)(b) was abusing her. PO Kistoo did not provide any other reason for his choice of words.

According to NYPD Patrol Guide Procedure 203-09, an officer should be courteous and respectful in their interaction with the public [BR 21].

§ 87(2)(g)
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§ 87(2)(g)

Allegation (C) Abuse of Authority: On unknown dates in 2017, Police Officer Mark Kistoo made sexually suggestive remarks to § 87(2)(b)

Allegation (D) Abuse of Authority: On August 5, 2017, Police Officer Mark Kistoo made a sexually suggestive remark to § 87(2)(b)

Allegation (E) Abuse of Authority: On August 5, 2017, Police Officer Mark Kistoo propositioned § 87(2)(b)

According to the provided screenshots of the text message thread between PO Kistoo and § 87(2)(b) on an unknown date in 2017, they were discussing the fact that § 87(2)(b) had a gun at home where their children lived and § 87(2)(b) wrote, “Yes I known that is why we argued about it.” PO Kistoo replied, “Don’t. Because we arrested a guy at his house for a gun who said the same lie. Stop defending this dude. He beating you like a rag doll. Time to start being a strong a beautiful chick. He literally could have killed you with that gun” [See photo BR 10]. The next thread shows that on an unknown date, § 87(2)(b) wrote, “Lol what do u mean do I have any other body parts without a bruise? My ass lol,” and PO Kistoo replied, “May be your ass and legs” [See photo BR 06]. On August 5, 2017, § 87(2)(b) continued, “Lol I honestly do not ever take any pics like that,” and PO Kistoo responded, “Lol I meant has ever bruises your ass or legs.” On the same date, PO Kistoo also wrote to § 87(2)(b) “I’m telling you. You don’t want to believe me. Your too sexy. But I’ll pass by one night when the kids are not around or we can meet up somewhere” [See photo BR 07]. § 87(2)(b) and § 87(2)(b) failed to provide screenshots of the entire text message thread to show the missing parts as well as all dates despite multiple requests and contact attempts.

During his interview, before reviewing the text messages, PO Kistoo mentioned that in his interaction with § 87(2)(b) he commented on her physical appearance and the fact that she is a beautiful woman because he was building a rapport with her and wanted to build her confidence since she had been abused [BR 16]. He stated it was his fault for trying to do so. He denied making any sexually suggestive remarks or romantic propositions to her. He also stated that when § 87(2)(b) alleged to him she was abused she sent him photos of her bruises covering the area above her breasts and legs on her own volition. After that, PO Kistoo asked her to send him pictures of her other injuries if there were any. Later, PO Kistoo stated that he asked § 87(2)(b) to send photos of her injuries when she mentioned she had bruises on her body. He did not ask § 87(2)(b) where the bruises were and was not certain whether he referred to her buttocks as “ass.” PO Kistoo informed § 87(2)(b) he was going to forward the photos to his supervisors and see if they could visit § 87(2)(b) and generate a domestic incident report and confiscate the gun. Subsequently, PO Kistoo forwarded the photos of § 87(2)(b)’s injuries to Lt. Goldstein to his personal cell phone since he did not have his department issued phone number. PO Kistoo deleted those photos from his phone and did not forward them to any domestic violence officers. PO Kistoo was unaware if § 87(2)(b) reached out to any domestic violence officers in regards and stated he was not a domestic violence officer. PO Kistoo explained that he continued his conversations with § 87(2)(b) after his

initial visit to her house because of their common military background and his desire to help her since she was a victim of domestic abuse.

Upon reviewing the thread, PO Kistoo acknowledged that it depicted his and § 87(2)(b)'s conversations. He provided the same justification for calling § 87(2)(b) a “strong and beautiful chick” and “sexy” as mentioned earlier. There were no other reasons for his choice of words. As for the conversation regarding § 87(2)(b)'s body parts, PO Kistoo stated that was when he requested § 87(2)(b) to send him pictures of her injuries. He explained he used the word “ass” because he was inquiring about bruises on her buttocks and legs and that § 87(2)(b) used that word herself. PO Kistoo further explained that he mentioned he would stop by § 87(2)(b)'s house because during their previous conversations, either over the phone or via text messages, she stated that when she moved out or got a divorce, PO Kistoo should come over for a glass of wine. In his text, PO Kistoo meant that they should celebrate and he would just pass by one day if she had a drink at her house or meet up at a bar. PO Kistoo denied offering § 87(2)(b) to meet before she made the offer herself. PO Kistoo and § 87(2)(b) never met afterwards and the last time she contacted him was in early 2018, when she called him and told him that § 87(2)(b) had taken or stolen her phone and downloaded some of her text messages. Although § 87(2)(b) obtained an order of protection against § 87(2)(b) she informed PO Kistoo that she was too afraid to proceed with her charges and intended to drop them. PO Kistoo believed that § 87(2)(b) ultimately did so.

When interviewed at the CCRB, Lt. Goldstein stated on an unknown date in 2017, he was informed by PO Kistoo through his personal phone about § 87(2)(b)'s allegations of domestic abuse against § 87(2)(b) and her intention to give the officers his gun and file a domestic incident report [BR 17]. Lt. Goldstein knew that PO Kistoo was not working on that day but he did not know how and when PO Kistoo obtained that information. On August 1, 2017, Lt. Goldstein, along with other officers from his command, visited § 87(2)(b)'s residence; processed § 87(2)(b)'s gun, and prepared a domestic incident report. Lt. Goldstein confirmed that on or about August 1, 2017, PO Kistoo might have sent him photos of § 87(2)(b)'s injuries on his personal cell phone. While Lt. Goldstein could not speak to PO Kistoo's intentions, he believed that PO Kistoo did so to provide evidence to support § 87(2)(b)'s arrest. Lt. Goldstein did not recall what specific injuries the photos depicted and noted they did not show any of § 87(2)(b)'s private parts, which would have been inappropriate. Lt. Goldstein was unaware how PO Kistoo obtained those photos. Lt. Goldstein could not find the photos in his phone and noted he must have documented them somehow but he did not recall in what manner. He did not know if the photos were turned over to the District Attorney's office. Lt. Goldstein was unaware if PO Kistoo and § 87(2)(b) were communicating on a personal level and whether PO Kistoo ever made any sexual advances towards § 87(2)(b). However, he explained that since the July 29, 2017 incident occurred within PO Kistoo's sector, he would expect PO Kistoo to follow up on § 87(2)(b) as well as other domestic violence victims. Although PO Kistoo was not a domestic violence officer, Lt. Goldstein believed it was his moral responsibility to do so. Since PO Kistoo is a patrol officer, Lt. Goldstein stated he was not required to document any follow-up visits in any NYPD database. An officer in PO Kistoo's situation could document that in his memo book but often officers are too busy to document everything. As for his use of personal cell phone, Lt. Goldstein stated he only uses it

while working since it is more convenient for him. He also added that he often has to communicate with civilians and officers when he is off duty.

According to NYPD Patrol Guide Procedure 203-09, an officer should be courteous and respectful in their interaction with the public [BR 21]. As per NYPD Patrol Guide Procedure 210-01, the Department has “zero-tolerance” policy towards any form of sexual assault and harassment of prisoners by other prisoners or any other person [BR 27]. NYPD Patrol Guide Procedure 205-36 states that sexual harassment includes but is not limited to sexually suggestive remarks, pictures, subtle or direct propositions for sexual favors [BR 28].

Civilian and Officer CCRB Histories

- This is a first CCRB complaint to which § 87(2)(b) and § 87(2)(b) have been parties [BR 25].
- PO Kistoo has been a member of service for 11 years and has been a subject in seven other CCRB complaints and 20 allegations, of which four were substantiated:
 - 200914325 involved substantiated allegations of threat of arrest, search of a person and a stop against PO Kistoo. The Board recommended Charges and the NYPD declined to prosecute.
 - 201008587 involved a substantiated allegation of search of person against PO Kistoo. The Board recommended Command Discipline and the NYPD imposed Instructions.
 - § 87(2)(g)

Mediation, Civil and Criminal Histories

- This complaint was not suitable for mediation.
- As of November 16, 2018, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards to this complaint [BR 23, 26].
- § 87(2)(b)
- According to OCA, § 87(2)(b) has no history of convictions in New York City [BR 24].

Squad No.: 8

Investigator:	_____ Signature	_____ Print Title & Name	_____ Date
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Squad Leader:	_____ Signature	_____ Print Title & Name	_____ Date
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Reviewer:	_____ Signature	_____ Print Title & Name	_____ Date
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